

# **PUBLIC DEFENDER COMMISSION MINUTES**

**March 16, 2006**

**The Boardroom**

**Chico Hot Springs**

**Pray, Montana**

## Call to Order:

The Public Defender Commission meeting was called to order at 8:45 a.m. by Chairman Jim Taylor.

## Commissioners Present:

Betty Bischel, Edgar; Daniel Donovan, Great Falls; Mike Sherwood, Missoula; Stephen Nardi, Kalispell; James Park Taylor, Missoula; Wendy Holton, Helena; Doug Kaercher, Havre; Caroline Fleming, Miles City; Jennifer Hensley, Butte; and Tara Veazey, Helena.

## Commissioners Absent:

Theda New Breast, Babb.

## Other Interested Parties:

Beth Brenneman, representing the Montana Advocacy Program; Sheri Heffelfinger, Legislative Services Division; Pat Gervais, of the Legislative Fiscal Division; Jennifer Erdahl, Legislative Audit Division; Steve Eschenbacher, private attorney in Hamilton, Montana; Lisa B. Kauffman, a private attorney in Missoula; Kris Copenhaver-Landon, private attorney in Billings; Brian Smith, public defender in Missoula County; Don Kinman, agent for AFSCME/AFLCIO; Carol Johns, private attorney from Wolf Point; Carl DeBelly, public defender in Yellowstone County ; Mariah Eastman, public defender in Gallatin County;

### Amendment of Agenda:

Chairman Taylor motioned to amend the agenda and table final discussion and vote on proposed standards until the April meeting and add a discussion on Senate Bill 282 Racial Profiling. The motion carried unanimously. The agenda was amended to table the vote on standards until the April Commission meeting and to add discussion regarding Senate Bill 282 to the March 17<sup>th</sup> Agenda.

### Correction of Minutes:

Corrections of the minutes of the January 23, 2006 meeting are as follows:

1. On page five, under Public Comment, George Corn is an attorney in Ravalli County, not a District Court Judge.
2. On page seven, paragraph two, Dierdra should be Deirdre.
3. Lisa Kauffman an attorney in Missoula gave public comment.
4. On page six, Lankton should be Langton.
5. On page nine, paragraph three, second sentence, “concerned” should be “concern”.

### Approval of Minutes:

Chairman Taylor moved to accept the corrected minutes; Commissioner Nardi seconded the motion and the motion carried unanimously.

### Mike Sherwood’s Report:

Commissioner Sherwood discussed the ABA Conference that he attended in Chicago. He talked about issues on establishing indigency standards and applying them. He also talked about how to retain or not

retain attorneys based on their performance. He said that attorney caseload levels were addressed at that conference as well.

### Standards:

The Commission went through the Standards for Counsel Representing Individuals Pursuant to the Montana Public Defender Act and made appropriate changes. These standards are now posted on the Office of the State Public Defender website.

Commissioner Donovan stated that the ABA Standards were adopted by Federal Court and that it would be useful to have the ABA's checklist.

Evaluation Protocol Committee will be headed by Commissioner Donovan along with Commissioners Caroline Fleming, Steve Nardi, Doug Kaercher and Betty Bichsel. Commissioners Donovan and Nardi will work on developing a checklist and then review with Commissioners Fleming, Bichsel and Kaercher to implement.

Indigency Determination Committee will be headed by Commissioner Veazey along with Commissioners Holton and Kaercher.

### 10:30 a.m. Public Comment on Standards:

There was no public comment.

### Standards

Commission Members continued making changes to the Standards for Counsel Representing Individuals Pursuant to the Montana Public Defender Act.

Pat Gervais of the Legislative Fiscal Division commented on ways funding can be received in the interim between legislative sessions.

Beth Brenneman of the Montana Advocacy Program talked about the concern of too many cases being handled by attorneys.

Harry Freebourn, Administrative Director, introduced Jennifer Erdhal, Legislative Audit Division, as the lead auditor for legislative audits of the activities of the Office of the State Public Defender.

There was discussion about the need for a policy statement regarding caseloads. Chairman Taylor proposed that Commissioners Donovan and Hensley draft strong ethical language on the issue of too many cases and not enough money that will submitted to the Legislature.

Pat Gervais, Legislative Fiscal Division, told that Commission that the Judiciary had recently alerted the Legislative Finance Committee about a potential three million dollar shortfall in the District Court Operations program for fiscal 2006.

Chairman Taylor volunteered to collect data and come up with a solution on how to handle post conviction relief cases.

Scott Crichton, ACLU, discussed the issue of caseloads and that the Commission should take into consideration what the Federal Standards are.

Beth Brenneman, Montana Advocacy Program, recommended conservative numbers on caseloads. She also discussed juvenile cases and involuntary commitments.

Eric Olson, Training Coordinator for the Office of the State Public Defender will work with Dan Donovan on case definition as it applies to juvenile cases.

Scott Crichton, ACLU, talked about whether a public defender would be assigned to someone not yet charged.

Commissioner Veazey will add a standard of publicizing so people are aware they can have a public defender if they are under questioning.

12:10 p.m. Lunch

1:30 p.m. Reconvened

There was discussion about adopting the ABA standards regarding death penalty cases.

There was discussion on training new attorneys to handle felony cases. Eric Olson made comments about conducting a mandatory boot camp for all staff attorneys.

### Transition of Standards

Commissioner Nardi and Chairman Taylor will work with Eric Olson to come up with a more definitive proposal on when and how the standards will be implemented.

### 2:15 Public Comment

Beth Brenneman, Montana Advocacy, expressed concerns regarding the standards on involuntary commitments. She feels that an explanation is needed as to what a case is to accommodate involuntary commitments.

Lisa Kaufman a private attorney from Missoula commented on the checklists and not putting the initial attorney in the position of getting too much information from the client.

Steve Eschenbacher a private attorney from Hamilton talked about the specificity of rules and ethical and professional responsibility of attorneys.

Commissioner Sherwood stated it should be the duty of the attorney to familiarize himself/herself with the rules. Chairman Taylor added that it's the duty of the training officer to properly educate the attorneys on the rules.

Sherry Heffelfinger, Legislative Services Division, cautioned the Commission to be careful regarding rule making.

Chief Randi Hood said that she will get in touch with the Department of Administration attorney on rule making.

Kris Copenhaver-Landon a private attorney from Billings cautioned the Commission about putting specific time restraints on attorneys as she feels the client may use this against the attorney.

Sherry Heffelfinger, Legislative Services Division gave additional comments on the Office of the State Public Defender's budget and its accountability for expenditures. She encouraged the Commission to "keep a big picture" because there is a fiscal aspect to every decision they'll make.

Chief Hood will come up with suggestions regarding under what circumstances there would be exceptions to the standards relating to initial contact with clients in rural Montana.

Chief Hood will work on grievance procedure.

There was discussion about the need for and related funding for a special crimes unit that would operate within the public defender system.

#### Public Comment:

Sherry Heffelfinger, Legislative Services Division, asked if the Commission had looked at standards of other states. She also wanted to know if there were subcommittees formed while drafting standards.

Scott Crichton, ACLU, expressed concern about the Commission's preparedness for funding for a death penalty task force.

Brian Smith, public defender in Missoula County, addressed the Commission regarding conflict of interest and his concern of Missoula County not having a system to track conflicts.

Chairman Taylor proposed that everyone be ready to address public comments and changes to the standards at the April meeting.

5:15 Meeting Adjourned